



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

MISCELLANY.

BANKRUPTCY—JURISDICTION OF THE UNITED STATES AND STATE COURTS. Unlike the Bankrupt Act of 1867, the act of 1898 restricts the jurisdiction of the national courts considerably. Suits by a trustee arising out of the bankrupt estate, except as qualified by section 23, can only be brought in the State courts, unless the bankrupt might have gone into other courts either under the adverse citizenship clause or by direct proceedings in the United States Circuit Courts, if some constitutional question is involved. Section 23 of the present act gives additional emphasis to this restriction, for it provides that State and United States Circuit Courts, as to controversies at law and in equity (as distinguished from proceedings in bankruptcy) between trustees and adverse claimants concerning property claimed or acquired by the trustees, shall have jurisdiction, but only to the same extent as if the controversy had been with the bankrupt and the adverse claimants; but as to criminal offences created by the act, the United States Circuit Courts are given concurrent jurisdiction with the District Courts within their respective territorial jurisdictions.

Under sub-section "b" of section 23, it seems that a defendant about to be sued by a trustee may consent to go into some other venue or State court, which was evidently intended as a favor to such defendant.

We also notice that this enlarged jurisdiction in the State courts gives the bankruptcy courts power to compel the attendance of the bankrupt or any other competent witness to appear in the State court before any judge thereof, and to be examined concerning the bankrupt estate (section 21).

Section 2, governing the creation of the courts of bankruptcy, makes the district courts bankruptcy courts, invested with such jurisdiction in law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings.

Among the specially enumerated powers, these courts shall cause the estates of bankrupts to be collected and reduced to money and distributed, and determine controversies in relation thereto, except as therein otherwise provided. This would seem to be only declaratory of the inherent right of the court to settle controversies in relation to a fund in court when collected, without enlarging the jurisdiction of the court as to such adversary claims as are provided for in section 23.

The Bankrupt Act of 1867 contained no provisions conferring or recognizing jurisdiction in State courts to entertain controversies between the assignee and adverse claimants. The new provisions of the present act were probably inserted by reason of the conflict of judicial opinion which existed in regard to the question whether State courts had jurisdiction of suits by trustees in bankruptcy for the recovery of assets or for other purposes.

The principle was correctly stated in *Eyster v. Gaff*, 91 U. S. 521, where Mr. Justice Miller said: "The debtor of a bankrupt, or the man who contests the right to real or personal property with him, loses none of those rights by the bankruptcy of his adversary. The same courts remain open to him in such contests, and the statute has not divested those courts of jurisdiction in such actions. If it has for certain classes of actions conferred a jurisdiction for the benefit of

the assignee in the circuit and district courts of the United States, it is concurrent with, and does not divest, that of the State courts."

This decision is unquestionably the reason for the new legislation.

There is a clear distinction between adversary proceedings at law and in equity, and "proceedings in bankruptcy," and this distinction is therefore pointed out in section 23 of the new act. Under the term "proceedings in bankruptcy," a large and exclusive jurisdiction is exercised which is essentially peculiar to the bankrupt law, and this jurisdiction belongs to the district courts so as to enable them to exercise original jurisdiction in bankruptcy proceedings, within the meaning of chapter 2 of the act.—*National Corp. Reporter*.

AN ENGLISHMAN IN A VIRGINIA COURT.—We publish below a portion of an article contributed to an English tobacco journal by a certain Mr. Bird, himself an Englishman, purporting to give an account of the proceedings in "an American court in Richmond, Virginia." It is scarcely necessary to say that Mr. Bird's narrative is pure fiction. Possibly it is a specimen of English humor. The one grain of material truth in it is the assertion that Virginians consider the pleading of the statute of limitations as disgraceful. We may add that they place lying in the same category. The fact that our British critic was the unsuccessful plaintiff in the proceedings which he mis-describes may explain his ill opinion of Virginia courts and juries. Pope suggests in his famous couplet, that it is contrary to ancient British habit to face an adverse judgment "with a good opinion of the law."

"The jury," says our romancer, "all smoke or chew tobacco; the counsel, witnesses, and anyone in court smoke cigars or pipes if they wish. The opening speeches are made by one counsel on each side. The counsel in America call themselves attorneys-at-law, and act as solicitors, lawyers and in any legal capacity they can.

"The plaintiff goes on the stand, as it is called, and during his examination the jury make remarks upon the evidence given, and ask as many questions as they like, or if they think fit, explain the evidence in their own way to the court generally.

"The first day was brought to a conclusion early, as the judge announced that his daughter was giving a dinner-party, and had invited him to be present! The court therefore adjourned at three until ten next morning.

"Counsel for the defence then asked that the court should not sit until twelve, as he had no time to open his letters. An argument took place, and to oblige him the court decided upon eleven o'clock, and hoped he could get through his letters by that time.

"The next morning, counsel, witnesses and defendants are found talking to all the jurymen, the plaintiff being at a disadvantage, as he is not acquainted with any of them.

"In due course, the case proceeds slowly, and the only incident during the plaintiff's cross-examination on very important points was the sudden appearance of newsboys to sell the latest edition of war news. There was a regular rush for the papers, the boys selling to the judge and most of the jurymen, and the proceedings were for the moment stopped.

"The plaintiff having, of course, no witnesses, the defendants went on the stand and at first pleaded the Statute of Limitations, which is considered a disgraceful thing to do in Virginia, even if the statute should apply, which in this case it did not.

"Having failed in that, they were not particular in their defence, and the extraordinary part of the proceedings was the fact that the counsel for the defence, whilst examining his witnesses, practically answered all his questions, even to making an occasional speech, and, as one juryman said out loud, 'he gives more testimony than all the witnesses put together.' The jury asked the defendant questions and made comments on the evidence all the time. When the witnesses came there was first hand-shaking by the jury who knew them, and then they were asked how their relations (mentioning them by name) were, and some time was spent in this way before the examination proceeded.

"When the court adjourned on Friday, the judge gave notice that the court would adjourn at one o'clock on the morrow, as many of the jury wanted to go to a funeral, and others to a base-ball match.

"On Monday, during the progress of the case, a soldier, who had just arrived from Tampa for recruits, exhibited a small alligator to the judge and jury, and this seemed to create much amusement.

"At last the speeches by the counsel were delivered. The counsel for the defence labored for three hours, and succeeded, in a very hot afternoon, in tiring out the jury, one of whom rose and whispered to him after he had finished, but it was not known what he said. The leading counsel for the plaintiff spoke for only one hour and a quarter. The jury retired, and after an absence of about two hours and a half sent word that they could not agree. They were discharged that night until the next morning, and still not agreeing, they were finally discharged altogether. The jury announced themselves as seven to five in favor of plaintiff, the leader of the five being a great personal friend of the defendant, who said from the first that he was not going to give a verdict to a foreigner. His strong colleague was an Irishman, and he practically said the same thing.

"A second trial took place as soon after as possible, and the judge summoned a special jury of business men to try the case. Incidents were numerous in this case, as when a juryman asked one of the counsel for a cigar; but the most questionable piece of taste was seeing the leader of the opposition of the former jury mixing with the defendants and witnesses, and talking to any of the jury that he happened to know."

THE BAR EXAMINATION AT STAUNTON.—At the recent bar examination held in Staunton, there were fifteen applicants, eleven of whom successfully passed the examination. We publish below a copy of the questions propounded. The following is a list of the fortunate eleven, with their addresses:

Albert O. Boschen, Richmond, Va.; John H. Dulin, Leesburg, Va.; Samuel H. Edwards, Charlottesville, Va.; Chas. J. Faulkner, Jr., Martinsburg, W. Va.; Chas. A. Hamner, Harrisonburg, Va.; W. C. Henderson, Pearisburg, Va.; William F. Keyser, Honeyville, Va.; H. H. Little, Norfolk, Va.; James Fontaine Minor, Staunton, Va.; W. B. Richards, Riverton, Va.; Elliott F. Story, Franklin, Va.

QUESTIONS PROPOUNDED BY THE VIRGINIA COURT OF APPEALS TO APPLICANTS FOR LICENSE, AT THE STAUNTON TERM, 1898.

1. What is law in its most comprehensive sense? What is municipal law, and why is it called a rule of action; why called a rule of civil action?

2. What is an *ex post facto* law, and to what may it apply?

3. What is a retrospective law? In what light are such laws regarded, and are they ever to be presumed as retroactive when the words will admit of another construction? Give reasons for your answer.

4. Was the common law of England the law of the colonies, and how far? If there was ever any express adoption of the common law in Virginia, state when and how?

5. What are the rules for construing statutes? Suppose the Constitution of the United States and laws of Congress conflict, which must prevail? Is the rule the same as to State laws; if yes, why?

6. What is the law merchant, and how is it ascertained?

7. In what cases do foreign laws prevail in our own tribunals? What is the *lex loci contractus*? What the *lex rei sitae*? What the *lex fori*? Give an instance of each.

8. Suppose the *lex loci contractus* and the *lex rei sitae* conflict, which prevails, and to what kind of property does this latter law chiefly refer itself?

9. What is the effect here of foreign letters of administration, or letters testamentary? In paying decedent's debts what rule governs? What in distribution, and for what reason?

10. To what are the absolute rights of individuals reducible? In what does the right of personal security consist, and what is allowed for protection of life and limb?

11. How far, if at all, may one use force in the protection of his property?

12. How far is a master liable for injuries done by his servants or their sub-agents by his order, or when engaged in his business, or when wilful and not in his presence?

13. How is an agency created; how for the sale of lands; and how and when are powers in an agent implied from necessity?

14. How far is the principal bound by acts of his agent after revocation but before notice thereof and how ought the revocation to be announced?

15. Upon what principle is the act of a partner held to be the act of the firm, and as binding upon the firm, and to what extent is the firm bound by the act of one of the partners?

16. What is essential to an agreement, and what is a good and what a valuable consideration?

17. If a contract is in writing and unambiguous, is oral evidence admissible to explain the intention of the parties or to contradict it? If not, state why.

18. What contracts import a consideration and which do not?

19. How may title to personal property be transferred?

20. Suppose the title to personal property sold proves defective and there was no express warranty of the title, has the vendee any remedy? Give reasons for your answer.

21. How must a sale of real estate to be valid be evidenced, and what is the maxim in regard to the purchase of real estate?

22. A sells to B 10 acres of land and puts B in possession of it, upon which B erects buildings and other improvements, but there is no conveyance to B of the land, only a contract in writing setting forth that A will convey the land to B when paid for at a stipulated price, and before B gets his deed or records the same D obtains a judgment against B and docket it in the county in which the land is situated, can D have satisfaction of his judgment out of this land to the exclusion of A's rights? How if B has paid for the land and D's judgment is against A and docketed in the clerk's office of the county in which the land is situated before B gets his deed or records it?

23. B gets a judgment against A for \$100 and levies execution on a horse which C claims. By what procedure can C assert his claim to the horse?

24. A gets a judgment against B for \$1,000 and execution goes into the hands of the sheriff of Augusta county on the 16th of September; B makes an assignment to C as trustee for various creditors on the 20th of September and records his deed in Augusta county on that day; C knows nothing of A's judgment and execution; and, among the assets of B, which were conveyed to C, were some bonds worth \$800. Which has the prior lien on the bonds, A's execution or C under the deed of assignment? Give reasons.

25. If in the above case B had several horses in Nelson county which were included in the deed, and the deed had been recorded in that county on the day it was made, and the execution had been delivered only to the sheriff of Augusta county on the 16th of September, which would have the prior lien on the horses in Nelson county, and why?

26. What is the jurisdiction of a justice of the peace in Virginia in civil and criminal matters, and in what cases can an appeal be taken, and to what courts?

27. Give the method of obtaining a charter from a court in Virginia, and give an instance where a court cannot grant a charter.

28. Give an instance where a stockholder in a corporation in Virginia is liable to pay more than the full value of the stock subscribed to in case the corporation should become insolvent.

29. A corporation in Virginia owes \$50,000 to various creditors, one of whom is B and his debt is \$10,000, the corporation has a solvent bond worth \$10,000, and no other assets, and conveys this bond to B to satisfy his debt. Is this contract valid?

30. Judgment is obtained against a corporation for \$500 by B and the corporation has no property, but there are \$10,000 in unpaid subscriptions to the stock of the corporation which were taken by solvent people; can these stock subscriptions be subjected to the payment of B's judgment, and if so, how?

31. What was the origin of the distinction between the courts of law and equity? Give an account of its progress and present state.

32. B, a married woman, has an estate of her own valued at \$75,000; her husband has no property and is employed at a salary of \$1,500 per year. B buys necessary clothing on credit amounting to \$200. Can the salary of her husband be subjected to the payment of this debt?

33. B, a woman, is engaged to be married to C and executes a voluntary conveyance of her property to her sister without the knowledge of C and for the purpose of defeating the marital rights of C, and subsequently marries him. Can C avoid the conveyance; and if so, why, and by what procedure?

34. A and B are opposing counsel taking depositions before a commissioner in chancery; A asks the witness a question which B thinks is illegal; what is necessary for B to do to have the question and answer excluded both in the lower court and in the Court of Appeals? Is it the practice for the witness to answer the question or decline to answer it? If the witness should decline to answer the question can he be made to do so, and how?

35. A and B are opposing counsel in a trial before a jury and A asks the witness a question which B thinks is illegal; what is necessary for B to do to have the question and answer excluded? Suppose he is not successful in having it excluded and desires to take the case to the Court of Appeals for this purpose, how can he get it in the record?

36. A lives in Rockingham county and makes a contract with B in Richmond to be performed there, and the contract is broken by A. A comes to Richmond for the purpose of attending a trial in court in another case, to which he is a party. While in Richmond he is sued by B upon the aforesaid contract and the writ is served on A while engaged in the trial in the court at Richmond; has A any defence to the jurisdiction of the court, and if so, what defense and how could he avail himself of it?

37. What is an issue out of chancery, and what are the circumstances under which it is granted?

38. A makes a fraudulent deed of assignment to B as trustee for certain creditors. B is a party to the fraud and an improper party to administer the trust. A creditor of A who is not secured in the deed desires to set aside the deed and to be paid out of the proceeds of the property. What course should be pursued? (Independently of the bankrupt law).

39. If a trustee in a deed of trust is proceeding to sell real estate in a manner not provided for in the deed, and the owner of the land objects to this manner of selling, what remedy has he and what proceedings must he take to protect himself?

40. How may a mechanic's lien be taken out in Virginia, how enforced, and within what time?

41. What time is allowed a fiduciary to file an inventory of property coming into his hands, how long is he allowed to file an account of sales, and when must he settle an account of his transactions as such fiduciary, before whom, and what is the penalty for failure to return the inventory required of him or an account of his sales, or to settle an account of his transactions as required by law? And who passes upon such accounts?

42. A has a judgment against B. B has no visible property on which the execution can be levied, but is thought to have valuable property concealed. How can A reach the property?

43. What are the actions given for the recovery of real estate, and when may each be brought? State the plea to each action.

44. A sues B in ejectment for twenty acres of land worth \$10 per acre and loses his case; can he take the case to the court of appeals if the lower court is in error?

45. How are crimes divided; what is a felony; and what a misdemeanor?

46. Define assault and battery and state how this offence is tried and punished?

47. May the accused testify on the trial in his own behalf; and to what extent, if any, is he subject to cross-examination by the prosecuting attorney?

48. Upon what evidence may an indictment be made, by whom, where returned, and is it necessary to be recorded, and if so, where?

A LAWYER'S CARD.—The subjoined card is sent us by a Newport News correspondent for insertion in our gallery of professional advertisements. The gentleman is evidently a "hustler":

ROBERT J. SHELTON,
ATTORNEY AT LAW AND SURVEYOR,
25 St., Newport News.

Charges reasonable in either line.
Deeds of all kinds drawn for only
\$2.50. Special attention given to
collections.

I dwell in my office and hence
can always be found there at any
hour, DAY OR NIGHT. Give me a
trial and you can not fail to be
pleased.

BOOK REVIEWS.

HURST'S ANNOTATED POCKET CODE OF VIRGINIA. Pulaski City, Va.: Hurst & Company, Law Book Publishers. 1898.

Prior to the publication of this volume, the profession of the State was already deeply indebted to Mr. Hurst for his efforts towards lightening their labors in the publication of his Digest of Virginia Reports. The present work increases that obligation many fold. It is an extremely handy volume, in form and contents. It is scarcely larger than the ordinary bank pass-book, and yet is crammed with useful matter, so arranged and indexed as to make the contents easily accessible. It contains all the sections of the Code, save such as lawyers rarely need—such as the law regulating elections, duties of public officers, the militia, taxation, etc. The annotations are full and of great value—the marginal references in the official Code being reproduced, with the addition of new cases and much other pertinent matter, so that on most subjects one has no need to refer to the larger official volume at all. All of the amendments are inserted, and all independent acts of a general nature, including the Negotiable Instruments Law, with an excellent index to the entire contents. A table of amendments to omitted sections and an index of all local acts since 1887, add practical value to the volume. The National Bankrupt Law is inserted as an appendix. The volume is really a handsome one. It is well printed, bound in flexible red leather covers, with rounded corners, and can easily be carried in the pocket. It is literally *multum in parvo*, and one cannot but wonder how the editor and publisher succeeded in compressing so much matter in such small compass. We bespeak for the book the heartiest sort of welcome from bench and bar.